Testimony of Attorney Royal J. Stark before the Judiciary Committee of the Connecticut General Assembly March 9, 2009

IN SUPPORT OF H.B. 6625, H.B. 6626; H.B. 6629; and

IN OPPOSITION TO S.B. 576; H.B. 6027

Chairman McDonald, Chairman Lawlor, and members of the Committee. My name is Royal Stark. I am an attorney with Connecticut Legal Services. I am also a member of the Conservator Revision Committee, convened by the Judicial Branch in 2006 to draft the reforms that were enacted as P.A. 07-116 and which made substantial changes and improvements to Connecticut's conservatorship laws. Over the past ten years I have represented numerous elderly and/or disabled individuals involved in conservatorship matters before the probate courts, the Superior Court, the Appellate Court and the Supreme Court.

OPPOSE

CT Legal Services opposes **S.B. 576, An Act Concerning the Connecticut Uniform Protective Proceedings Jurisdiction Act**. This uniform act should not be enacted hastily. There is no urgency to pass this. Connecticut has already taken steps, in P.A. 07-116 to provide the probate courts with jurisdiction to act in exigent circumstances like those covered by the uniform act. This proposed legislation needs to be carefully studied, evaluated and debated by all stakeholders, including the disability rights community, whose viewpoint seems to be missing from the debate thus far.

In addition to the provisions of our current conservatorship statutes that are amended by S.B. 576, there is the very real possibility that if enacted, the uniform act will unintentionally cause harm to our existing statutory framework and, at best, create confusion due to the different terminology employed. Broad statements like that contained in section 9 of the bill, make the provisions of S.B. 576 the exclusive source of jurisdiction for appointing an involuntary conservator of the estate, notwithstanding the language in C.G.S. 45a-650 which already sets out jurisdiction requirements for all involuntary conservatorships in Connecticut. S.B. 576 does not amend 45a-650 directly, but, as written, it will either undercut or call into confusion one of the core provisions in our law that protects the civil rights of persons at risk of being conserved. This is but one example, albeit the most obvious, of how S.B. 576 will undo, or, at least, make unclear, our current conservatorship statutes. The Conservator Revision Committee spent hundreds of hours debating and crafting these statutes in order to improve Connecticut's conservatorship laws.

It does not denigrate the hard work put in the by uniform commissioners in drafting the provisions set forth in S.B. 576 to call for a deliberate, careful study, analysis and debate over whether Connecticut should adopt any form of this uniform act, and if yes,

how the provision should be changed and carefully tailored to mesh with existing laws and statutory framework and provisions. In fact the approved recommendation of the CT Bar Association's (CBA) Legislative Committee was to put legislative adoption of the uniform act on a slow track. (It is NOT the position of the CBA as a whole that the uniform act be adopted in Connecticut.)

The proponents of the bill within the CBA Estates & Probate and Elder Law sections have stated previously that the uniform act will not make large, substantive changes to our existing conservatorship statutes, but as set out above, there is the great possibility that there will be unintended harmful consequences to the enactment of the uniform act. Slow, careful and deliberate study by all stakeholders is necessary.

There are various entities that could, and probably all should, study the adoption of this uniform act before legislative action is taken. As a member of the Conservator Revision Committee I am deeply concerned that the Committee was not asked to weigh in on the proposed legislation. I am also concerned about the lack of support for the uniform act by any disability rights group. It calls into question whether this essential group of stakeholders was adequately, if at all, consulted about the effects of the uniform act both generally, and as it will effect Connecticut's existing statutory scheme, which provides great protections for civil rights.

There is no need to hastily enact the uniform act, and there is a great need to carefully study the act before taking legislative action on it. S.B. 576 ought not to be passed.

I also oppose **H.B. 6027, An Act Concerning Probate Court Reforms**, specifically sections 6 and 12 of the proposed legislation that will undercut the revisions to the probate appeals statutes enacted as part of P.A. 07-116. These previous revisions reformed Connecticut's probate appeal process from one that had been famously described as "bizarre and archaic" into a process that is streamlined, simplified, and easy to use and understand. H.B. 6027 will create a two-tier or two-class system for probate appeals, that will be more expensive for some appellants, and confusing for all.

It will be confusing because of careless, confusing drafting - such as the reference in section 12 to "return day" and the seemingly impossibility of reconciling sections 6 and 12. The inaccurate inclusion of the phrase return day to an appeal process that is not governed by mesne process will create significant unnecessary problems for the litigants and the courts in determining what process is required in probate appeals, and it will set back efforts by advocates, including me, and by the Justices of the Supreme Court to clarify that mesne process is NOT part of our former or existing probate appellate procedure.

Substantively, the change from having all probate appeals heard by a Superior Court judge is unnecessary and seems to be driven less by jurisprudential concerns and needs than by concerns for the well being of probate judges whose districts may be consolidated. There are some probate judges whose expertise in, fore example, will contests and trust interpretation, might be useful in the Superior Court, but

it may make more sense to tap into that expertise by making the probate courts part of the Superior Court. In this way we could keep the existing good judging that goes on in the probate court while jettisoning the other problems of an ailing and antiquated system.

SUPPORT

I support **H.B. 6625, An Act Concerning the Courts of Probate**. I support the provision that allows for service of a probate appeal on the probate court by mail. This provision will make the filing of probate appeals less expensive and will continue the efforts of the Cons. Revision Comm. to streamline and simplify the probate appeal process.

I support **H.B. 6626, An Act to Transfer Jurisdiction Over All Contested Probate Cases to the Superior Court**. This provision recognizes the problems with our existing probate system and the inadequacies of that system, sometimes in spite of the presence of good judges, to handle contested cases in a fully adequate and professional way. This provision also completes the work done in the 1970s to consolidate the trial court work in Connecticut into a single solitary court, the Superior Court, so that all trials, irrespective of what court handled them in the past, would occur in the Superior Court.

I support **H.B. 6629, An Act Concerning Guardians Ad Litem and Conservatorships**. This provision will eliminate the appointment of superfluous, often unnecessarily expensive, and sometime prejudicial guardians ad litem (GAL) in conservatorship cases. The appointment of a GAL prior to the appointment of an involuntary conservator is highly prejudicial to the respondent in a conservatorship application proceedings. The appointment of a GAL after a conservator has been appointed serves no purpose. Any function of a GAL in such a case can, and should, be handled by the probate judge.

Respectfully submitted,

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FACTS about

Why SB 576 – AAC the CT Uniform Protective Proceedings Jurisdiction Act, Will Not Work for CT

CT's Legal Services Programs believe that the impact of this proposal on CT law and procedures has not been fully analyzed, particularly in the context of the revision to the conservatorship statutes enacted two years ago. We would ask that this proposal not be acted on this session in order to provide an opportunity for CT attorneys to consider the impact of this act, as viewed through the prism of our state specific laws.

SB 576 is a Uniform Law that First Needs to be Tailored to Existing CT Law
Given the enactment of substantial revisions to the CT conservatorship statutes just two years ago (P.A. 07-116), it is critical that there be a careful analysis of the impact of this proposal on CT's new and carefully crafted protections. We should take the time to get it right the first time.

- Instead of conforming to existing CT law, this proposal will create confusion by conflicting and contradicting existing statutory language, terminology and definitions.
- CT law already addresses some of the substantive changes this proposal seeks to implement.

SB 576 Raises Serious Due Process Concerns
This proposal allows judges from different jurisdictions to communicate about which court should have jurisdiction over a dispute. Courts with no centralized supervision will be allowed to assert jurisdiction, raising questions of professional and ethical standards. Jurisdiction will be conferred on all courts to inquire and decide what is the appropriate forum. Persons conserved in an alien forum can be deprived of the due process protections afforded by their home state.

SB 576 Applies Standards Developed for Children – Not Adults
This proposal is modeled on the Uniform Custody Jurisdiction and Enforcement Act. The child custody analogy implies that elders or adults with disabilities are to be treated as children. This is both discriminatory and inappropriate. Adults in CT are presumed to be competent unless and until there is a determination through clear and convincing evidence of a functional limitation. Children are deemed legally incompetent and child custody law uses the "best interests" standard for substitute decision making. CT's recent efforts to afford important protections in conservatorship proceedings (P.A. 07-116) clearly indicates that CT is to use the "substituted judgment" standard when supplanting an adult's judgment. This means that CT courts must look at the person's past preferences and practices, regardless of whether they were in the person's "best interest".

Useful provisions of SB 576 may be adapted in the future to harmonize with CT's existing law. However, more time is needed to consider its provisions and implications before any action is taken.

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